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Paper No. 11

OTTO REGNER  
5491 WINCHESTER  
TROY, MI 48085

In re Application of  
Otto Regner  
Application No.: 10/042,626  
Filed: January 11, 2002  
Attorney Docket No:

**COPY MAILED**

APR 01 2004

**OFFICE OF PETITIONS**

: ON PETITION

This is a decision on the petition under 37 CFR §1.137(b), March 18, 2004, to revive the above-identified application.

The petition is dismissed.

Any request for reconsideration of this decision must be submitted within TWO (2) MONTHS from the mail date of this decision. Extensions of time under 37 CFR 1.136(a) are permitted. The reconsideration request should include a cover letter entitled "Renewed Petition" under 37 CFR 1.137(b)."

This application became abandoned for failure to respond in a timely manner to the non-final Office action mailed February 21, 2003. The notice set a period for a shortened statutory period for reply of three months from its mailing date. No response was received within the allowable period, and the application became abandoned on May 22, 2003. A Notice of Abandonment was mailed on September 22, 2003.

Effective December 1, 1997, the provisions of 37 CFR 1.137(b) now provide that where the delay in reply was unintentional, a petition may be filed to revive an abandoned application or a lapsed patent pursuant to 37 CFR 1.137(b). A grantable petition pursuant to 37 CFR 1.137(b) must be accompanied by:

- (1) the required reply, unless previously filed. In a non-provisional application abandoned for failure to prosecute, the required reply may be met by the filing of a continuing application. In an application or patent, abandoned or lapsed for failure to pay the issue fee, or any portion thereof, the required reply must be the payment of the issue fee or any outstanding balance thereof.
- (2) the petition fee as set forth in 37 CFR 1.17(m);

(3) a statement that the entire delay in filing the required reply from the due date for the reply until the filing of a grantable petition pursuant to 37 CFR 1.137(b) was unintentional. The Commissioner may require additional information where there is a question whether the delay was unintentional; and

(4) any terminal disclaimer (and fee set forth in 37 CFR 1.20(d)) required pursuant to 37 CFR 1.137(c).

The instant petition does not satisfy the requirements of items (1) or (2) above.

As to item (1), above a timely reply to the non-final Office action was not found among the petition papers. Although petitioner asserts that a reply is with the examiner, the only response that petitioner could be referencing is a communication filed December 15, 2003, and this communication was not filed within the maximum allowable period for reply set by the non-final Office action. Petitioner must, therefore, file a proper response to the non-final Office action, i.e., an amendment or continuing application before the petition can be considered grantable.

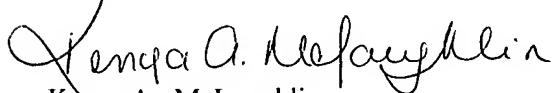
As to item (3), the petition fee of \$665.00 was not found. It is noted that petitioner states that no fee is required because the abandonment was not the fault of petitioner. Petitioner is advised that the fee for the instant petition that was filed under 37 CFR 1.137(b) is \$665.00 (small entity) and must be remitted before the petition can be considered grantable. Petitioner may wish to consider file a petition under 37 CFR 1.181 to withdraw the holding of abandonment for which there is no fee, or a petition under 37 CFR 1.137(a) for which the fee is \$55.00, but the burden of proof is much higher than that of the instant petition filed under 37 CFR 1.137(b). A form for the petition under 37 CFR 1.137(a) is enclosed for petitioner's convenience.

Further correspondence with respect to this matter should be addressed as follows:

By mail:                   Commissioner for Patents  
                                 United States Patent and Trademark Office  
                                 Box 1450  
                                 Alexandria, VA 22313-1450

By facsimile:             (703) 872-9306  
                                 Attn: Office of Petitions

Telephone inquiries concerning this matter may be directed to the undersigned at (703) 305-0010.



Kenya A. McLaughlin  
Petitions Attorney  
Office of Petitions

Enclosure: Form PTO/SB/61